

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA NO. 3829/MUM/2023 : A.Y : 2017-18

Shivsahyadri Sahakari Patpedhi Vs. Income Tax Officer,
Maryadit, 118, 5th floor, Ward-19(3)(3), Mumbai.
Devi Bhavan, Senapati Bapat Marg, (Respondent)
Matunga (W), Mumbai 400 016.
PAN : AAFAS6090N (Appellant)

Appellant by : None
Respondent by : Shri Manoj Kumar Singh
Date of Hearing : 06/03/2024
Date of Pronouncement : 05/04/2024

ORDER

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

The assessee has filed this appeal challenging the order dated 31.08.2023 passed by the Commissioner of Income Tax (Appeals), NFAC, Delhi ('CIT(A)' for short) and it relates to assessment year 2017-18. The appellant-society is aggrieved by the confirmation by CIT(A) of the disallowance made by the Assessing Officer ('AO' for short) under Section 80P(2)(d) of the Income Tax Act, 1961 ('Act' for short) in respect of the interest income earned from deposits kept with co-operative banks.

2. The assessee, which is a credit co-operative society registered under the Maharashtra Co-operative Societies Act, had filed its Return of Income (RoI)

on 30.10.2017 declaring NIL income after claiming a deduction of Rs.5,01,16,340/- under Section 80P(2)(d) of the said Act. The return was initially processed under Section 143(1) of the Act. The case was selected for scrutiny under CASS. Notice under Section 142(1) of the Act was issued to the assessee. Eventually the AO by order dated 27.12.2019 disallowed the deduction as claimed.

3. Feeling aggrieved, the appellant challenged the same before the CIT(A). The First Appellate Authority passed the impugned order confirming the disallowance. Hence, this appeal.

4. We have heard the parties. Perused record.

5. The issue in our view is no longer *res integra*. The authorities below have concurrently found that the provisions of Section 80P(2)(d) of the Act envisage allowable deduction only against the interest earned by co-operative society on account of deposit made with any other co-operative society. The CIT(A) has also found that the intention of the legislature to exclude the co-operative banks or commercial banks is with a view to ensure that credit facility is available to the co-operative societies (para 8.1 of the order), which are supposed to provide “credit facility to their Members for agricultural purposes and to create agro-based activities”.

6. The learned AR has placed reliance on the decision of Hon'ble Madras High Court in *Thorapadi Urban Co-op. Credit Society Ltd. vs ITO, [2023] 156 taxmann.com 419 (Madras)* and the decision of this Tribunal in ITA No. 455/Mum/2023 dated 21.04.2023 (Kalpataru Estate Building No. 2

Cooperative Housing Society Ltd.) and ITA Nos. 2955 to 2958/Mum/2023 dated 06.11.2023 (Kinjal Heaven).

7. The learned CIT-DR has supported the impugned order on the ground that Section 80P(2)(d) of the Act cannot take into its ambit the interest income on deposits kept with co-operative banks/commercial banks.

8. We have considered the submissions made. As noticed earlier, the issue stands concluded by the decisions of this Tribunal as referred to above. Even the Hon'ble Madras High Court in the case of *Thorapadi Urban Co-op. Credit Society Ltd. (supra)* has held thus in paras 8 to 10 of its order :-

"8. The main issue is to decide in the present case is as to whether the petitioner Co-operative Society is entitled for a deduction for the interest income received from the Co-operative Bank?"

9. It would be appropriate to extract hereunder the relevant portion of section 80P(2)(d).

"80 P. Deduction in respect of income of co-operative societies:

*(1) ** ** **

(2) The sums referred to in sub-section (1) shall be the following, namely:—

*(a) to (c) ** ** **

(d) "in respect of any income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society, the whole of such income"

9.1 A reading of the above said provision makes it clear that in the event if any Co-operative Society derived income by way of interest from investment made in any other Co-operative Society the whole such interest is eligible for deduction. Now the issue is as to whether the Co-operative Bank would fall

within the purview of the term 'Co-operative Society'. In the present case, the petitioner produced a document to show that the Co-operative Bank, where they have made investments was registered under the Tamil Nadu Co-operative Societies Act, 1983 on 20-5-2003. In this regard, he also produced a copy of the Certificate of Incorporation of the said Co-operative Bank. Therefore, it is clear that the investment made by the petitioner is a Co-operative Bank registered under the Co-operative Societies Act. The Income Tax Act, 1961 has also defined 'Co-operative Society' under section 2(19) as follows:

'2(19). "Co-operative society" means a co-operative society registered under the Co- operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co- operative societies.'

10. A reading of the above definition would make it clear that 'Co-operative Society' means a Co-operative Society registered under Co-operative Societies Act, 1912. Thus, a Co-operative Society referred therein is only a co-operative society as defined under the Act, be it a Co-operative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank."

9. In that view of the matter, we find that the appeal has to succeed.

10. In the result, appeal of the assessee is allowed. The AO is directed to allow the deduction as claimed.

Order pronounced in the open court on 05/04/2024.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai; Dated : 05/04/2024

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai